

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

JUN 28 1999

EDWARD TIMOTHY GARCIA,

Plaintiff,

v.

R. Thompson
CLERK

No. CIV-99-0198 JP/WWD

REED SMITH (Warden) WACKENHUT CORP.,
E. BRAVO (Associate Warden) WACKENHUT CORP.,

Defendants.

MEMORANDUM OPINION AND ORDER

This matter is before the Court *sua sponte*, pursuant to 28 U.S.C. § 1915(e)(2) and Fed.R.Civ.P. 12(b)(6), to review Plaintiff's amended civil rights complaint filed pursuant to the order of April 21, 1999 (Doc. #6). For the reasons below, and on the standards set forth in the April 21 order, Plaintiff's complaints will be dismissed for failure to state a claim upon which relief can be granted.

In the original complaint Plaintiff claimed that, "as a result of dirty system caused by not being allowed to relieve myself when I have to," he had suffered a rash on his feet. The April 21 order directed Plaintiff to file an amended complaint "stating with particularity the factual support for his claim that Defendants' regulations or practices caused the rash on his feet." The amended complaint states that although the prison doctor "had no idea what the rash was.... I am sure the rash was a direct result of the restrictions on toilet use." These allegations provide no support for Plaintiff's conclusory assertion as to the cause of the rash, *Estelle v. Gamble*, 429 U.S. 97, 105-107 (1976) ("diagnostic techniques or forms of treatment" are matters for medical judgment), and the complaint will be dismissed.

IT IS THEREFORE ORDERED that Plaintiff's original and amended complaints are DISMISSED with prejudice, and an order of dismissal shall be entered in accordance with this opinion.

James A. Baker
UNITED STATES DISTRICT JUDGE

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